



Chain Reaction (“PCR”) analysis. The communication relates to the ongoing process of developing a biomarker by the State’s experts, which is protected by Rule 26 rather than the underlying analytical data which the Court had ordered produced (and which the State has timely produced). Once it was determined that there was such a biomarker, the State tested environmental samples collected for that marker and then produced in a timely manner the analytical data. Going beyond the Court’s Order, the State also produced a detailed description of how the State’s experts determined that there is a reliable and scientifically valid biomarker for poultry waste. All of the initial results as well as a description of the process were produced well in advance of the filing of the State’s Motion for Preliminary Injunction. Moreover, on its face, this email has nothing to do with Dr. Olsen’s PCA analysis and, therefore, is completely irrelevant to the issue before the Court—whether Dr. Olsen can remove rejected data from his PCA.

2. The State provided the data used in Dr. Olsen’s analysis as the results were verified through internal and external quality assurance/quality controls. Neither the State nor its experts have hidden any data. Defendants received both the scientifically valid and the rejected data in a timely manner, and both were identified.

3. Defendants’ characterization of the expedited schedule that the parties are working under is also suspect. Defendants have had three months to respond to the State’s motion. They have had the opportunity to depose all of the State’s experts—while the State has not had the same opportunity. Defendants’ claim of prejudice as a result of the schedule cannot be credited.

4. Defendants complain that the State has not complied with the Court’s deadline of providing expert materials within 21 days prior to that expert’s deposition. This is simply untrue. As fully briefed in the State’s Opposition to Defendants’ Motion to Amend Schedule for Hearing

on Plaintiff's Motion for Preliminary Injunction [DKT #1505], the State has complied with very few exceptions.

5. Defendants were plainly aware of the error of including the rejected data at the time of the deposition, which is revealed by their examination of Dr. Olsen during his deposition. Dr. Olsen was examined at length regarding the rejected Food Protech Data. *See* Olsen Depo., 51:11-55:24; 57:6-59:25; 125:2-11 (Attached as Exhibit 1). Moreover, when counsel for the State conferred with Tyson defense counsel regarding disclosing the inclusion of the previously rejected data, defense counsel admitted that he "suspected" as much when he deposed Dr. Olsen. Defendants are not being prejudiced by Dr. Olsen's correction of a previous error unless it is considered prejudicial not to have a "gotcha" moment on cross-examination. Moreover, Defendants' experts have more than two weeks to study this data and present their criticisms when their experts take the stand. The prejudice would be one against the State for its expert to be precluded from fully explaining his analysis and the fact that his conclusions did not materially change after removal of the small amount of rejected data.

6. Principal Component Analysis is not "voodoo science." PCA is a well-established and recognized technique repeatedly used by many environmental scientists to track a wide variety of waste through the environment. There are dozens of peer-reviewed articles where the authors used PCA to identify sources of environmental contamination. *See, e.g.,* V. Simeonov, et al, "Environmetric Modeling and Interpretation of River Water Data", *Analytical and Bioanalytical Chemistry*, v. 374, n.5, 2002, pp. 898-905 (attached as Exhibit 2); G. Mihailov, et al, "Multivariate Statistical Assessment of the Pollution Sources Along the Stream of Kamchia River, Bulgaria", *Water Science and Technology*, Vol. 51, No. 11, 2005, pp. 37-43 (attached as Exhibit

3); Hartman, P., "Polychlorinated Biphenyls in Narragansett Bay Surface Sediments",  
Chemosphere, v. 57, N.1, October 2004, pp. 9-20 (attached as Exhibit 4).

7. Defendants have engaged in a practice of closing their eyes to the risk to human health and harms inflicted on the environment caused by their pollution in the Illinois River Watershed. In this lawsuit, they seek to avoid responsibility for that harm. In that vein, they now seek to exclude the correction of what is—at its core—a scrivener's error. Of the 14,700 pieces of data used for the PCA, 677 were rejected data. Upon discovery of this error, in order to check the impact of this error upon his opinions, Dr. Olsen reran the same PCA to which he testified at his deposition, the only difference being that the rejected data were removed from the analysis. When these data are removed from the database, 604 samples are used for PCA instead of the original 621 samples. Thus, only 17 of the original 621 samples did not have enough parameters to meet PCA requirements. Dr. Olsen's conclusions did not change, nor did the methodology that he employed. He simply reran the data using a fewer number of samples. Defendants suffer no prejudice as a result of Dr. Olsen discovering and correcting such an error. Conversely, limiting the State's inability to correct this error would substantially prejudice the State. The State's motion to supplement Dr. Olsen's opinion should be granted.

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